

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Schwenk,

Plaintiff,

v.

**CIVIL ACTION
NO. 05-40071-FDS**

Auburn Sportsplex, LLC, et al.,

Defendants.

SCHEDULING ORDER

SAYLOR, J.

This Scheduling Order is intended to provide a reasonable timetable for discovery and motion practice in order to help ensure a fair and just resolution of this matter without undue expense or delay.

By agreement of the parties, discovery and motion practice in this litigation shall proceed in phases. *See* Fed. R. Civ. P. 16; Local Rule 16.1(E).

The first phase shall involve discovery and motion practice concerning the books and other financial records of Auburn Sportsplex, LLC (“Auburn”) and matters otherwise related to the financial affairs of Auburn.

Discovery and motion practice as to any remaining issues shall occur in a later phase. Pending further order of the Court, the scope of any further discovery will be determined at the status conference on February 15, 2006.

Timetable for Discovery and Motion Practice

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 16.1(F), it is hereby ORDERED that:

- 1. Initial Disclosures.** Initial disclosures required by Fed. R. Civ. P. 26(a)(1) must be completed by 10/24/05.

2. Motion to Dismiss under Fed. R. Civ. P. 12(b)(1).

- a. Defendants must file any motion to dismiss under Fed. R. Civ. P. 12(b)(1) to dismiss for lack of subject matter jurisdiction by 11/1/05.
- b. Any opposition to such motion must be filed by 11/30/05.
- c. Defendants may file a brief reply memorandum within 7 days after service of the opposition.

3. Amendments to Pleadings. Except for good cause shown, no motions seeking leave to add new parties or to amend the pleadings to assert new claims or defenses may be filed after 3/3/06.

4. Fact Discovery - Interim Deadlines.

- a. All requests for production of documents and interrogatories must be served by 12/1/05.
- b. All requests for admission must be served by 1/31/06.
- c. All depositions, other than expert depositions, must be completed by 1/16/05.

5. Fact Discovery - Final Deadline. All discovery, other than expert discovery, must be completed by 1/31/06.

6. Status Conference. A status conference will be held on 2/15/06.

7. Dispositive Motions.

- a. Dispositive motions, such as motions for summary judgment or partial summary judgment and motions for judgment on the pleadings, must be filed by 3/31/06.
- b. Oppositions to dispositive motions must be filed within 45 days after service of the motion.

Procedural Provisions

1. Extension of Deadlines.

- a. **Fact Discovery - Interim Deadlines.** The parties may extend any interim deadline for fact discovery by mutual written agreement filed with the court.

- b. **Fact Discovery - Final Deadline; Expert Discovery.** The parties may extend the final deadline for fact discovery or the deadlines for expert discovery for a combined total of up to 30 days by mutual written agreement filed with the court.
 - c. **Dispositive Motions and Pretrial Conference.** The parties may not extend the deadline for filing dispositive motions or the date of the final pretrial conference without leave of court. No extension of discovery deadlines shall modify or affect deadlines for filing dispositive motions or the date of the pretrial conference unless the court expressly orders otherwise.
 - d. **Procedure for Seeking Extensions from Court.** Motions to extend or modify deadlines will be granted only for good cause shown. Good cause may be shown where discovery has been delayed or a deadline otherwise has been affected by the time taken by the court to consider a motion. All motions to extend shall contain a brief statement of the reasons for the request; a summary of the discovery, if any, that remains to be taken; and a specific date when the requesting party expects to complete the additional discovery, join other parties, amend the pleadings, or file a motion.
- 2. **Motions to Compel or Prevent Discovery.** Except for good cause shown, motions to compel discovery, motions for protective orders, motions to quash, motions to strike discovery responses, and similar motions must be filed no later than the close of fact discovery or the close of expert discovery, whichever deadline is relevant. If additional discovery is compelled by the court after the relevant deadline has passed, the court may enter such additional orders relating to discovery as may be appropriate.
- 3. **Reply Memoranda.** Parties need not seek leave of court to file a reply memorandum in response to an opposition to any motion, provided that such a reply memorandum does not exceed twelve pages, double-spaced, and is filed within seven days (excluding intermediate Saturdays, Sundays, and legal holidays) after service of the opposition memorandum. Parties may otherwise file reply or surreply memoranda only with leave of court. When such leave is sought, the moving party may file a proposed reply or surreply memorandum with the motion for leave.
- 4. **Additional Conferences.** Upon request of counsel, or at the court's own initiative, additional case-management or status conferences may be scheduled. Parties may request telephonic conferences where appropriate to avoid undue inconvenience or expense.

5. **Early Resolution of Issues.** The court recognizes that, in some cases, resolution of one or more preliminary issues may remove a significant impediment to settlement or otherwise expedite resolution of the case. Counsel are encouraged to identify any such issues and to make appropriate motions at an early stage in the litigation.
6. **Pretrial Conference.** Lead trial counsel are required to attend any pretrial conference.

By the Court,

10/20/05

Date

/s/ Martin Castles

Deputy Clerk